

MATTER OF MOORE
In Exclusion Proceedings
A-17797587

Decided by Board July 12, 1971, as amended December 9, 1971

- (1) Pursuant to section 291 of the Immigration and Nationality Act, the burden of proof is upon a commuter applicant for admission to establish that he is not subject to exclusion. Since an alien commuter is not returning to an actual unrelinquished permanent residence in the United States, he is not entitled to a hearing at which the Service bears the burden of proof under the rule of *Kwong Hai Chew v. Rogers*, 257 F.2d 606 (D.C. Cir., 1958).
- (2) Since a permanent resident alien commuter makes a meaningful departure when he leaves the United States, he does not come within the ambit of *Rosenberg v. Fleuti*, 374 U.S. 449 (1963), and is subject to possible exclusion upon his return to this country.
- (3) The standard of clear, convincing and unequivocal evidence set forth in *Woodby v. Immigration and Naturalization Service*, 385 U.S. 276 (1966), is not applicable to exclusion proceedings.

EXCLUDABLE: Act of 1952—Section 212(a) (9) [8 U.S.C. 1182(a) (9)]—Conviction of crime involving moral turpitude prior to entry.

ON BEHALF OF APPLICANT: Pro se

The applicant, male native and citizen of Canada, married, 33 years of age, applied on February 8, 1971 for admission as a returning resident alien (commuter). He was detained for an exclusion hearing before a special inquiry officer, who found the applicant excludable. The decision was certified to this Board. It will be affirmed.

The applicant had been admitted to the United States on December 14, 1967 as an immigrant. He immediately assumed the status of a commuter.

The record indicates that on December 3, 1970 the applicant was convicted in Detroit, Michigan, after a plea of guilty, of the crime of attempted breaking and entering with intent to commit larceny. The applicant was placed on probation for two years.